

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK
CENTRAL ISLIP DIVISION

APTIVE ENVIRONMENTAL, LLC,

Plaintiff,

vs.

VILLAGE OF EAST ROCKAWAY,
NEW YORK,

Defendant.

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NO. 2:19-cv-03365-SJF-SIL

AFFIDAVIT OF JOHN E. RYAN
IN SUPPORT OF DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

JOHN E. RYAN, being duly sworn, deposes and says:

1. I am admitted to practice before this Court. I am a member of the firm of RYAN, BRENNAN & DONNELLY, LLP, attorneys for Defendant, VILLAGE OF EAST ROCKAWAY ("VILLAGE").

2. This Affidavit, and the accompanying Memorandum of Law, are submitted in support of the VILLAGE's motion for an Order, pursuant to Rule 56 of the Federal Rules of Civil Procedure, granting the VILLAGE Summary Judgment dismissing Plaintiff's Second Amended Verified Complaint.

3. Plaintiff filed its Second Amended Verified Complaint on December 13, 2019. See Document 44. The only claim that remains is that the VILLAGE's Code, as amended, imposes an "unconstitutional" \$200 license fee.

4. On January 6, 2020, the VILLAGE filed its Answer to Plaintiff's Second Amended Verified Complaint. See Document 46. In addition to denying the Plaintiff's Complaint, annexed

as Exhibit “1” to the VILLAGE’s Answer was a copy of Local Law 2 of 2020 “amending Section 117.3 of the Code of the INCORPORATED VILLAGE OF EAST ROCKAWAY with Regard to Commercial Solicitation License Fees.”

5. A copy of this Local Law, which was duly adopted by the VILLAGE on January 13, 2020 and filed with the New York Secretary of State, is annexed hereto as **Exhibit “A”**.

6. This Amendment to the VILLAGE’S Code states:

§171.3. License Fee.

All applications must be accompanied by a \$200.00 fee payable to the Clerk Village of East Rockaway. This fee will be applied to:

- a) processing costs;
- b) criminal background checks;
- c) maintenance of the “No Knock” list; and
- d) enforcement of the provisions of the Code.

7. With respect to the “criminal background check” component of the fee, private investigators that I have utilized in the past charge at least one hundred (\$100.00) for such a service. Indeed, Plaintiff has conceded that criminal background checks range from \$100 to \$125 on Long Island. See Declaration of Pierson “Pierse” Baldwin, Docket 40-1 at ¶19, p.870. The New York State Office of Court Administration (“OCA”) charges a \$95.00 fee just for a New York Statewide criminal history record search. See **Exhibit “B”**.

8. As a matter of public record, and as Plaintiff has confirmed through discovery including the recent deposition of the VILLAGE Clerk, her salary with benefits, is \$123,000.00 annually. The Superintendent of Buildings, who is responsible for Code enforcement, has an annual salary with benefits of \$121,000.00.

9. These annual salaries equate to an hourly rate of pay equal to about \$65.00. If the VILLAGE Clerk and Superintendent of Buildings were to expend up to an hour each with respect

to the processing of a license application, maintenance of the “no-knock” list and enforcement, the VILLAGE’s expense for the fee would be an additional \$130.00.


10. In short, the VILLAGE’s licensing fee of \$200.00 is more than reasonable and, as set forth in the accompanying Memorandum of Law, certainly not unconstitutional.

11. In view of the foregoing and in order to avoid this motion, I requested Plaintiff’s Counsel to voluntarily discontinue this action. See Exhibit “C”, e-mails to and from Clint Cowan, dated February 7-10, 2020. In response, Plaintiff’s Counsel advised:

“we would be happy to avoid motion practice as well, but that would require the VILLAGE to

- a) lower its fee to a constitutional level of \$25-\$50, and
- b) pay the attorneys’ fees and costs incurred by [Plaintiff] from the beginning of the litigation through February 10, 2020.”

WHEREFORE, it is respectfully requested that the VILLAGE’s motion be granted and the Second Amended Complaint be dismissed, together with costs, attorneys’ fees and such other and further relief as this Court deems proper.


JOHN E. RYAN

Sworn to before me this
20th day of February, 2020


NOTARY PUBLIC

